

City of Sacramento  
State Legislature

7

B I L L R E F E R R A L

DATE: APR 19 1990 COMMITTEE ACTION: \_\_\_\_\_

TO: Chief Keams, Police DATE: \_\_\_\_\_

FROM: KENNETH EMANUELS, LEGISLATIVE ADVOCATE

REPLY NO LATER THAN: MAY 3 1990

A.B. 3939, As Amended 4-5-90 \* Author McClintock

S.B. \_\_\_\_\_, As Amended \_\_\_\_\_ \* Author \_\_\_\_\_

\*Date of introduction or latest amendment

Please review the attached measure to determine its effect upon the City of Sacramento and complete the following questions as appropriate. During your analysis of this measure, if questions arise, please feel free to contact Ken Emanuels at 444-6789, FAX 444-0303, (1400 K Street, Suite 306, Sacramento, CA 95814.) This questionnaire should be returned to the City Attorney's Office for presentation to the Council Committee on Law and Legislation. PLEASE LEAVE THE BILL ATTACHED TO THIS FORM.

NO RECOMMENDATION. If you think no Committee action on this bill should be taken, either because the bill is not of sufficient importance to the City or for any other reason, please mark here, do not fill out the rest of the form, and return this form to the City Attorney's Office. \_\_\_\_\_.

PLEASE TYPE YOUR RESPONSE

1. Briefly describe the provisions of the bill (attach additional sheets if necessary).

Attached

2. This measure should be: (Please circle desired position)

Supported                      Opposed                      Supported if Amended  
Placed on Watch List                      Other (explain)

3. Please explain your reasons for the above determination, including how this measure effects your Department and the fiscal impact of this measure on the City. Please make your comments in a format that can be used in a letter to state officials. (Continue on next page or attach additional sheets if necessary.)

Attached

CEV 10/27/87  
(Continue answer to Question No. 3 here)

4. Specify the City's legislative policy guideline(s) applicable to this measure (if any).

AB 3939 (McClintock)  
Referral

Response to #1:

This bill would provide that any minor, age 14 or over, who is charged with committing certain specified crimes in connection to a criminal street gang, who has a previous conviction or juvenile court adjudication for a violation of these provisions, or who used or possessed a firearm in the commission of a violation of these provisions, shall be prosecuted as an adult.

Response to #3:

Gang activity in communities throughout the state is rising at an alarming rate. This bill will cause minors who commit certain crimes in furtherance of gang-related activity to be tried as adults. The possibility that these minors could receive much more severe penalties should be a deterrent for many of them.

ASSEMBLY BILL

No. 3939

Introduced by Assembly Member McClintock

March 2, 1990

An act to amend Section 186.22 of the Penal Code, relating to street gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 3939, as amended, McClintock. Street gangs.

Existing law prohibits various defined activities carried out with a defined connection to a criminal street gang, and provides that these activities shall be punished alternatively by imprisonment in the county jail or in the state prison, as specified. Existing law also provides an enhancement sentence for those convicted of a felony carried out with a defined connection to a criminal street gang, as specified.

This bill would provide that any minor age 14 or over who is charged with a violation of these provisions, who has a previous conviction *or juvenile court adjudication* for a violation of these provisions, or who used or possessed a firearm in the commission of a violation of these provisions, shall be prosecuted as an adult.

This bill would also provide that a minor convicted under the circumstances described above shall not be eligible for probation.

Because this bill would create an increased burden on the criminal court system by treating certain juveniles as adults, it constitutes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for

making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 186.22 of the Penal Code is  
2 amended to read:

3 186.22. (a) Any person who actively participates in  
4 any criminal street gang with knowledge that its  
5 members engage in or have engaged in a pattern of  
6 criminal gang activity, and who willfully promotes,  
7 furthers, or assists in any felonious criminal conduct by  
8 members of that gang, shall be punished by  
9 imprisonment in the county jail for a period not to exceed  
10 one year, or by imprisonment in the state prison for one,  
11 two, or three years.

12 (b) (1) Except as provided in paragraph (2), a  
13 person who is convicted of a felony which is committed  
14 for the benefit of, at the direction of, or in association with  
15 any criminal street gang, with the specific intent to  
16 promote, further, or assist in any criminal conduct by  
17 gang members, shall, upon conviction of that felony, in  
18 addition and consecutive to the punishment prescribed  
19 for the felony or attempted felony of which he or she has  
20 been convicted, be punished by an additional term of  
21 one, two, or three years at the court's discretion. The  
22 court shall order the imposition of the middle term of the  
23 sentence enhancement, unless there are circumstances  
24 in aggravation or mitigation. The court shall state the  
25 reasons for its choice of sentence enhancements on the  
26 record at the time of the sentencing.

27 (2) Any person who violates this subdivision in the  
28 commission of a felony punishable by imprisonment in  
29 the state prison for life, shall not be paroled until a  
30 minimum of 15 calendar years have been served.

31 (c) Any person who is convicted of a public offense  
32 punishable as a felony or a misdemeanor, which is

1 committed for the benefit of, at the direction of, or in  
 2 association with, any criminal street gang, with the  
 3 specific intent to promote, further, or assist in any  
 4 criminal conduct by gang members, shall be punished by  
 5 imprisonment in the county jail not to exceed one year,  
 6 or by imprisonment in the state prison for one, two, or  
 7 three years, provided that any person sentenced to  
 8 imprisonment in the county jail shall be imprisoned for  
 9 a period not to exceed one year, but not less than 180  
 10 days, and shall not be eligible for release upon completion  
 11 of sentence, parole, or any other basis, until he or she has  
 12 served 180 days. If the court grants probation or suspends  
 13 the execution of sentence imposed upon the defendant,  
 14 it shall require as a condition thereof that the defendant  
 15 serve 180 days in the county jail.

16 (d) Notwithstanding any other provision of law, the  
 17 court may strike the additional punishment for the  
 18 enhancements provided in this section or refuse to  
 19 impose the minimum jail sentence for misdemeanors in  
 20 an unusual case where the interests of justice would best  
 21 be served, if the court specifies on the record and enters  
 22 into the minutes the circumstances indicating that the  
 23 interests of justice would best be served by that  
 24 disposition.

25 (e) As used in this chapter, "pattern of criminal gang  
 26 activity" means the commission, attempted commission,  
 27 or solicitation of two or more of the following offenses,  
 28 provided at least one of those offenses occurred after the  
 29 effective date of this chapter and the last of those offenses  
 30 occurred within three years after a prior offense, and the  
 31 offenses are committed on separate occasions, or by two  
 32 or more persons:

33 (1) Assault with a deadly weapon or by means of force  
 34 likely to produce great bodily injury, as defined in Section  
 35 245.

36 (2) Robbery, as defined in Chapter 4 (commencing  
 37 with Section 211) of Title 8 of Part 1.

38 (3) Unlawful homicide or manslaughter, as defined in  
 39 Chapter 1 (commencing with Section 187) of Title 8 of  
 40 Part 1.

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1 (4) The sale, possession for sale, transportat  
2 manufacture, offer for sale, or offer to manufacture  
3 controlled substances as defined in Sections 11054, 11055,  
4 11056, 11057, and 11058 of the Health and Safety Code.

5 (5) Shooting at an inhabited dwelling or occupied  
6 motor vehicle, as defined in Section 246.

7 (6) Arson, as defined in Chapter 1 (commencing with  
8 Section 450) of Title 13.

9 (7) The intimidation of witnesses and victims, as  
10 defined in Section 136.1.

11 (8) Grand theft of any vehicle, trailer, or vessel as  
12 described in Section 487h.

13 (f) As used in this chapter, "criminal street gang"  
14 means any ongoing organization, association, or group of  
15 three or more persons, whether formal or informal,  
16 having as one of its primary activities the commission of  
17 one or more of the criminal acts enumerated in  
18 paragraphs (1) to (8), inclusive, of subdivision (e), which  
19 has a common name or common identifying sign  
20 symbol, whose members individually or collectively  
21 engage in or have engaged in a pattern of criminal gang  
22 activity.

23 (g) Notwithstanding Section 707 of the Welfare and  
24 Institutions Code, any minor age 14 or over who is  
25 charged with committing any violation of this section,  
26 who also has a previous conviction or *juvenile court*  
27 *adjudication* for any violation of this section, or any minor  
28 age 14 or over who is alleged to have personally used or  
29 possessed, either on his or her person or in a motor  
30 vehicle, any firearm during the commission of a violation  
31 of this section, shall be prosecuted as an adult.

32 (h) Any minor convicted pursuant to subdivision (g)  
33 shall not be eligible for probation.

34 (i) This section shall remain in effect only until  
35 January 1, 1993, and as of that date is repealed, unless a  
36 later enacted statute, which is enacted before January 1,  
37 1993, deletes or extends that date.

38 SEC. 2. Section 186.22 of the Penal Code, as added by  
39 Section 5.1 of Chapter 930 of the Statutes of 1989, is  
40 amended to read:

1 186.22. (a) Any person who actively participates in  
2 any criminal street gang with knowledge that its  
3 members engage in or have engaged in a pattern of  
4 criminal gang activity, and who willfully promotes,  
5 furthers, or assists in any felonious criminal conduct by  
6 members of that gang, shall be punished by  
7 imprisonment in the county jail for a period not to exceed  
8 one year, or by imprisonment in the state prison for one,  
9 two, or three years.

10 (b) (1) Except as provided in paragraph (2), any  
11 person who is convicted of a felony which is committed  
12 for the benefit of, at the direction of, or in association with  
13 any criminal street gang, with the specific intent to  
14 promote, further, or assist in any criminal conduct by  
15 gang members, shall, upon conviction of that felony, in  
16 addition and consecutive to the punishment prescribed  
17 for the felony or attempted felony of which he or she has  
18 been convicted, be punished by an additional term of  
19 one, two, or three years at the court's discretion. The  
20 court shall order the imposition of the middle term of the  
21 sentence enhancement, unless there are circumstances  
22 in aggravation or mitigation. The court shall state the  
23 reasons for its choice of sentence enhancements on the  
24 record at the time of the sentencing.

25 (2) Any person who violates this subdivision in the  
26 commission of a felony punishable by imprisonment in  
27 the state prison for life, shall not be paroled until a  
28 minimum of 15 calendar years have been served.

29 (c) Any person who is convicted of a public offense  
30 punishable as a felony or a misdemeanor, which is  
31 committed for the benefit of, at the direction of, or in  
32 association with, any criminal street gang, with the  
33 specific intent to promote, further, or assist in any  
34 criminal conduct by gang members, shall be punished by  
35 imprisonment in the county jail not to exceed one year,  
36 or by imprisonment in the state prison for one, two, or  
37 three years, provided that any person sentenced to  
38 imprisonment in the county jail shall be imprisoned for  
39 a period not to exceed one year, but not less than 180  
40 days, and shall not be eligible for release upon completion



1 of sentence, parole, or any other basis, until he or she has  
2 served 180 days. If the court grants probation or suspends  
3 the execution of sentence imposed upon the defendant,  
4 it shall require as a condition thereof that the defendant  
5 serve 180 days in the county jail.

6 (d) Notwithstanding any other provision of law, the  
7 court may strike the additional punishment for the  
8 enhancements provided in this section or refuse to  
9 impose the minimum jail sentence for misdemeanors in  
10 an unusual case where the interests of justice would best  
11 be served, if the court specifies on the record and enters  
12 into the minutes the circumstances indicating that the  
13 interests of justice would best be served by that  
14 disposition.

15 (e) As used in this chapter, "pattern of criminal gang  
16 activity" means the commission, attempted commission,  
17 or solicitation of two or more of the following offenses,  
18 provided at least one of those offenses occurred after the  
19 effective date of this chapter and the last of those offenses  
20 occurred within three years after a prior offense, and the  
21 offenses are committed on separate occasions, or by two  
22 or more persons:

23 (1) Assault with a deadly weapon or by means of force  
24 likely to produce great bodily injury, as defined in Section  
25 245.

26 (2) Robbery, as defined in Chapter 4 (commencing  
27 with Section 211) of Title 8 of Part 1.

28 (3) Unlawful homicide or manslaughter, as defined in  
29 Chapter 1 (commencing with Section 187) of Title 8 of  
30 Part 1.

31 (4) The sale, possession for sale, transportation,  
32 manufacture, offer for sale, or offer to manufacture  
33 controlled substances as defined in Sections 11054, 11055,  
34 11056, 11057, and 11058 of the Health and Safety Code.

35 (5) Shooting at an inhabited dwelling or occupied  
36 motor vehicle, as defined in Section 246.

37 (6) Arson, as defined in Chapter 1 (commencing with  
38 Section 450) of Title 13.

39 (7) The intimidation of witnesses and victims, as  
40 defined in Section 136.1.

1 (f) As used in this chapter, "criminal street gang"  
2 means any ongoing organization, association, or group of  
3 three or more persons, whether formal or informal,  
4 having as one of its primary activities the commission of  
5 one or more of the criminal acts enumerated in  
6 paragraphs (1) to (7), inclusive, of subdivision (e), which  
7 has a common name or common identifying sign or  
8 symbol, whose members individually or collectively  
9 engage in or have engaged in a pattern of criminal gang  
10 activity.

11 (g) Notwithstanding Section 707 of the Welfare and  
12 Institutions Code, any minor age 14 or over who is  
13 charged with committing any violation of this section,  
14 who also has a previous conviction or *juvenile court*  
15 *adjudication* for any violation of this section, or any minor  
16 age 14 or over who is alleged to have personally used or  
17 possessed, either on his or her person or in a motor  
18 vehicle, any firearm during the commission of a violation  
19 of this section, shall be prosecuted as an adult.

20 (h) Any minor convicted pursuant to subdivision (g)  
21 shall not be eligible for probation.

22 SEC. 3. No reimbursement is required by this act  
23 pursuant to Section 6 of Article XIII B of the California  
24 Constitution because the only costs which may be  
25 incurred by a local agency or school district will be  
26 incurred because this act creates a new crime or  
27 infraction, changes the definition of a crime or infraction,  
28 changes the penalty for a crime or infraction, or  
29 eliminates a crime or infraction. Notwithstanding Section  
30 17580 of the Government Code, unless otherwise  
31 specified in this act, the provisions of this act shall become  
32 operative on the same date that the act takes effect  
33 pursuant to the California Constitution.